

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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MOOG INC.,) 22-CV-187
Plaintiff)
vs.
Buffalo, New York
SKYRYSE, INC., et al) July 15, 2022
Defendant.
- - - - - X

ORAL ARGUMENT

Proceeding held via Zoom for Government Platform

All parties appeared remotely.

Transcribed from audio of Zoom for Government Platform

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

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-and-

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1 MOOG, INC. VS. SKYRYSE, INC.

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3 P R O C E E D I N G
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12:32:19
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12:33:14 7 THE CLERK: Good afternoon. We're on the
12:33:17 8 record in civil proceeding 22CV187, Moog V Skyryse for
12:33:25 9 oral argument. Could, participants please state their
12:33:28 10 appearances?

12:33:31 11 MS. ANDOH: Your Honor, on behalf of
12:33:33 12 Plaintiff Moog, you have Rena Andoh, Lai Yip and Kazim
12:33:39 13 Naqvi from Shepphard Mullin, and then you have Rob
12:34:29 14 Fluskey and Polly Muto from Hodgson Russ.

12:34:33 15 MAGISTRATE JUDGE MCCARTHY: Okay. Good
12:34:33 16 afternoon, everyone.

12:34:35 17 MS. ANDOH: Good afternoon.

12:34:36 18 MR. LUMISH: Good afternoon, your Honor.
12:34:38 19 Doug Lumish, Latham and Watkins from Skyryse. With me
12:34:43 20 is my partner, Gabe Gross. And then if you take up all
12:34:47 21 of the motions, you'll hear from Arman Zahoory and Ryan
12:34:52 22 Banks. And then some other team members that are here
12:34:55 23 to observe. And then I want to introduce Gerry Luni. I
12:35:00 24 don't know if we did this last time. Ms. Luni is
12:35:02 25 general counsel at Skyryse, and she is observing here as

1 MOOG, INC. VS. SKYRYSE, INC.

12:35:05 2 well.

12:35:05 3 MAGISTRATE JUDGE MCCARTHY: Good afternoon,
12:35:07 4 everyone. I do believe I met Ms. Luni at the last
12:35:11 5 conference, if memory serves. Okay.

12:35:14 6 MR. GREEN: Good afternoon, Anthony Green
12:35:16 7 and here on behalf the individual Defendants Robert
12:35:25 8 Pilkington and Ms. Misook Kim.

12:35:25 9 MAGISTRATE JUDGE MCCARTHY: Good afternoon
12:35:26 10 to all of you. And did you all receive my e-mail of
12:35:31 11 earlier today?

12:35:31 12 MS. ANDOH: We received an e-mail from you
12:35:34 13 regarding the trade secret identification motion. You
12:35:37 14 referenced the possibility of also sending some notes on
12:35:42 15 Moog's motion to compel that we did not receive.

12:35:44 16 MAGISTRATE JUDGE MCCARTHY: You did not
12:35:45 17 receive that because I didn't send it.

12:35:47 18 MS. ANDOH: As long as it wasn't
12:35:48 19 transmitted, your Honor, we're good.

12:35:50 20 MAGISTRATE JUDGE MCCARTHY: No, that is
12:35:51 21 okay. I may, you know, depending on the time frame
12:35:55 22 today, I may have to do a little triage and reconvene,
12:36:02 23 perhaps, next week on some aspects. Let me just begin,
12:36:06 24 and then I'll hear from counsel. I do want to address,
12:36:11 25 first, and I know all three motions that are before me

1 MOOG, INC. VS. SKYRYSE, INC.

12:36:15 2 right now, the Skyryse's motion to compel identification
12:36:21 3 of the trade secrets, that is docket No. 166. And then
12:36:30 4 Moog's motion to compel, production of discovery
12:36:33 5 responses, that is 176. And Skyryse's motion to compel
12:36:40 6 production of various discovery information is 179. I
12:36:48 7 want to start with the trade secret motion, and we'll go
12:36:56 8 as far as we can today. And if we need to continue into
12:37:00 9 some day next week or whenever is convenient for all of
12:37:02 10 you, I will work that out. I got some more flexibility.
12:37:08 11 I think you had been advised that I, believe it or not,
12:37:12 12 might be serving on a state court jury, and I thought I
12:37:15 13 would be knocked out immediately. But, to my amazement,
12:37:22 14 I wasn't. I was eventually knocked out, but I was kind
12:37:26 15 of amazed I stayed in the process as long as I did.
12:37:30 16 But, in any event, I think it helped that I wore my robe
12:37:37 17 over to jury selection. All right.

12:37:40 18 First of all, let me ask all of you, has
12:37:42 19 anybody contacted Judge Vilardo's Chambers to set a
12:37:49 20 specific date or dates for the hearing in October? I
12:37:54 21 tried to contact his Chambers today, but the calendar
12:38:00 22 clerk was out. Has that been done?

12:38:05 23 MS. ANDOH: To my knowledge, your Honor, it
12:38:07 24 has not. And that is actually sort of a housekeeping
12:38:10 25 issue that I think we probably need to raise with you in

1 MOOG, INC. VS. SKYRYSE, INC.

12:38:13 2 context of some of this motion practice because what
12:38:16 3 you're going to be hearing from us when we talk about
12:38:19 4 this trade secret issue is that there is quite a backlog
12:38:24 5 at our forensic vendor with respect to Moog getting
12:38:28 6 access to all of the images that have been produced to
12:38:31 7 it. So, as we sit here today, I think the hope had been
12:38:35 8 that we were going to have access to all of the images
12:38:37 9 by the beginning of July, and it now appears that we
12:38:40 10 will not have access to all of them until, possibly, by
12:38:43 11 the end of this month, depending on the speed with which
12:38:46 12 the various technical issues and backlog is getting
12:38:50 13 resolved. And, also, I defer to my colleague, Mr.
12:38:54 14 Fluskey on this, but we were trying to figure out what
12:38:57 15 the best way was to have this discussion with your
12:39:00 16 Honor, because it seems unlikely that we're going to be
12:39:02 17 able to have this October 17 date hold if we're in a
12:39:06 18 situation where we still haven't actually received
12:39:09 19 access to all of the discovery that we're supposed to be
12:39:12 20 reviewing eight weeks out.

12:39:15 21 MAGISTRATE JUDGE MCCARTHY: Right. Okay.
12:39:16 22 No, I understand. And that seems to be an issue that is
12:39:22 23 nobody's fault, directly, other than it's just a
12:39:26 24 logistical problem that has arisen. So, I guess what --
12:39:30 25 we'll put that issue on hold for a little bit. And I'll

MOOG, INC. VS. SKYRYSE, INC.

12:39:35 2 hear from counsel from Skyryse on this motion, but the
12:39:39 3 reason I sent that e-mail was just to kind of think out
12:39:44 4 loud, if you will, and, as I indicated, that is by no
12:39:49 5 means a final decision, but it's just that I see things
12:39:56 6 unfolding at one speed or another under those general
12:40:03 7 parameters. I think everybody would agree that whenever
12:40:06 8 -- when you get to the preliminary injunction hearing,
12:40:10 9 whenever that is, whether it's October or a later date,
12:40:15 10 if Moog is going to succeed, it's going to have to give
12:40:21 11 Judge Vilardo considerable detail as to precisely which
12:40:28 12 trade secrets it claims to have been wrongfully used by
12:40:32 13 the Defendants, taken and/or used. And by the same
12:40:38 14 token, well, I can say, having spoken to Judge Vilardo
12:40:46 15 on this question, that, you know, he is going to want to
12:40:52 16 make sure that Skyryse and the individual Defendants
12:40:55 17 have had an adequate opportunity to prepare their
12:41:00 18 position once that specific identification has been
12:41:05 19 made. Now, I did say in the past, and, you know, I
12:41:08 20 recognize that Moog has quoted my statement that
12:41:12 21 Skyryse, or, excuse me, that it cannot be expected to
12:41:19 22 identify all of the trade secrets which it will claim or
12:41:23 23 which it will intend to invoke in this case when it
12:41:29 24 doesn't know the full scope of what was taken, and, I
12:41:34 25 can see their position in that regard. On the other

MOOG, INC. VS. SKYRYSE, INC.

12:41:36 2 hand, at some point, that is going to have to occur and
12:41:40 3 then I think we have to work backwards from that as to
12:41:43 4 when the specific identification is going to take place.
12:41:48 5 And, you know, I'm not, by no means, an expert on source
12:41:52 6 code or anything of that sort, but it does seem to me
12:41:55 7 from what I've read, that there is going to have to be a
12:41:59 8 fairly specific identification of the particular
12:42:02 9 components of source code, whether by line or whatever
12:42:23 10 that is claimed to be a trade secret and why. And,
12:42:34 11 then, there also has to be -- it's part of Moog's burden
12:42:41 12 in showing that a particular item is a trade secret,
12:42:44 13 they are going to have to show, not only that it's not
12:42:47 14 known in the art, but that reasonable measures have been
12:42:52 15 taken to protect its confidentiality. And I know that
12:42:55 16 is part of the dispute in terms of the demands that
12:42:58 17 Skyryse is making, I guess, in its companion motion.
12:43:02 18 But, sooner or later, that identification, specific
12:43:09 19 identification, is going to have to be made. And I just
12:43:13 20 thought I would throw this out to people. I'm sure it's
12:43:21 21 something that everybody has already been thinking of,
12:43:23 22 but it seems to me we need to work out a time frame for
12:43:27 23 which the specific identification is going to be made
12:43:30 24 and work backwards from that. I've said my peace in
12:44:47 25 that regard for right now.

1 MOOG, INC. VS. SKYRYSE, INC.

12:44:49 2 I'd like to hear from counsel, first, from
12:44:51 3 Skyryse, and then from counsel for Moog and the
12:44:54 4 individual Defendants.

12:44:56 5 MR. LUMISH: Thank you, your Honor. Doug
12:44:58 6 Lumish again for Skyryse. Forgive me if I keep clearing
12:45:02 7 my throat and coughing. I'm about day 20 after Covid
12:45:06 8 and it won't quite leave.

12:45:09 9 MAGISTRATE JUDGE MCCARTHY: Sorry to hear
12:45:11 10 that.

12:45:11 11 MR. LUMISH: It keeps interrupting my
12:45:13 12 ability to spike. I apologize for that.

12:45:15 13 MAGISTRATE JUDGE MCCARTHY: No problem.

12:45:16 14 MR. LUMISH: Your Honor, I was instructed
12:45:18 15 when I was a young lawyer that when the judge has given
12:45:22 16 a tentative in your favor, don't talk too much and don't
12:45:26 17 talk your way out of the tentative, so I'm going to be
12:46:30 18 careful here not to do that.

12:46:32 19 MAGISTRATE JUDGE MCCARTHY: Let me just
12:46:33 20 emphasize, it's only very tentative. It's kind of
12:46:40 21 thinking out loud with you folks. But I see your point
12:46:44 22 in your papers, but I also, you know, to a certain
12:46:48 23 extent, I see Moog's point. So I'm just trying to work
12:46:52 24 through a realistic time table for everybody.

12:46:56 25 MR. LUMISH: Fair enough, your Honor, and I

MOOG, INC. VS. SKYRYSE, INC.

12:46:58 2 understand that. So, I think the point from Moog that
12:47:01 3 I'll start with, which is the one I think your Honor
12:47:04 4 probably has some sympathy with the allegations this is
12:47:08 5 some vast theft and some extraordinary case and there
12:47:38 6 are these huge numbers of documents that we hear in
12:47:40 7 every paper and we hear about in every hearing, I just
12:47:44 8 want to start at first principles. This case is not
12:47:47 9 some extreme outlier that should be one that throws all
12:47:52 10 the rules out the window, including Rule 26 and Rule 33.
12:47:56 11 The allegations at heart are that two former Moog
12:48:01 12 employees left the company, and on the way out the door,
12:48:03 13 they copied a large volume of documents. And given the
12:48:06 14 volume, it's probably a hard drive or, you know, some
12:48:09 15 large directories and what not. And I'll let Mr. Green
12:48:13 16 speak to the details of that if he chooses to. But at
12:48:16 17 the end of the day, this fact pattern is a common one.
12:48:20 18 It's what you hear every day in trade secret cases all
12:48:25 19 over the country that the former employees left and took
12:48:28 20 documents with them when they left and brought them with
12:48:31 21 them when they joined a competitor. It's not some
12:49:56 22 extraordinary case. It's not some extreme fact pattern
12:50:03 23 that somehow excuses Moog from basic discovery
12:50:08 24 obligations. And that is what our motion is really
12:50:12 25 about is one about a basic discovery obligation. We ask

MOOG, INC. VS. SKYRYSE, INC.

12:50:25 2 in our first interrogatory, which is the classic
12:50:30 3 interrogatory one in a trade secret case, "tell us what
12:50:35 4 your trade secrets are." And they should be forced to
12:50:39 5 answer that like every other trade secret Plaintiff.
12:50:42 6 It's four months into the case now. We are, unless they
12:50:46 7 are successful in, apparently, now to move the hearing,
12:50:49 8 which we may object to, three months away from a hearing
12:50:53 9 in front of Judge Vilardo where they are going to ask
12:50:56 10 Judge Vilardo to impose very significant injunctive
12:50:59 11 relief on Skyryse. And what they are not going to say
12:51:04 12 to Judge Vilardo is, well, our trade secrets are
12:51:07 13 somewhere in the nine devices that we gave to the
12:51:10 14 neutral discovery vendor, IDS, go find them for
12:51:17 15 yourself. And yet, that is what they've told us. And
12:51:22 16 they are not going to say to Judge Vilardo, it's all of
12:51:25 17 every single word of the 1.1 million files we say that
12:51:29 18 Mr. Pilkington took and the 136,000 files that we say
12:51:35 19 Ms. Kim took, go figure it out yourself. They are going
12:51:42 20 to give Judge Vilardo, if they want to win their motion,
12:51:48 21 they are going to give Judge Vilardo some discrete set
12:51:51 22 of things they say here is what is different about what
12:51:54 23 we do from what's in the general knowledge of the field.
12:51:57 24 That is definitional for trade secret. If they don't do
12:52:01 25 that, they are out. They are going to say, here are the

1 MOOG, INC. VS. SKYRYSE, INC.

12:52:05 2 specific trade secrets. They have to identify them with
12:52:08 3 particularity in the rules of the district. If they
12:52:15 4 don't do that, they are out. They have to show they had
12:52:18 5 possession of those trade secrets. As your Honor noted,
12:52:21 6 they have to show they took reasonable protective
12:52:26 7 measures to protect those trade secrets. Those are all
12:52:29 8 things that are definitional. If they don't meet those
12:52:38 9 thresholds that they even begin to have trade secrets,
12:52:42 10 they lose. So, we know they have to come to Judge
12:52:48 11 Vilardo with something. And right now, what they've
12:52:50 12 given us in response to interrogatory one is, we'll tell
12:52:53 13 you later after discovery is over, maybe, but go
12:52:57 14 investigate it yourself by asking our former employees
12:53:01 15 who you fired, and by looking in the nine devices that
12:53:03 16 we produced to IDS. That is not a proper response.
12:53:06 17 That is not in any way close to a sufficient response
12:53:11 18 under Rule 26 or Rule 33. And at the end of the day,
12:53:15 19 we're really just asking them to provide a true and
12:53:19 20 honest response. They can supplement. Let's talk about
12:53:23 21 the volume again. I understand, your Honor, where the
12:53:28 22 issues lie. I get it, there are a lot of issues that
12:53:34 23 are here. They say it's of our making, but it's really
12:53:39 24 of their making. They don't identify which of those
12:53:44 25 files matter. Some of them, I don't know what they are,

1 MOOG, INC. VS. SKYRYSE, INC.

12:53:47 2 although Mr. Green maybe knows better than I do. Some
12:53:51 3 of them may be system files. 1.1 million files sounds
12:54:00 4 to me like a hard drive dump. What is it in that that
12:54:11 5 matters? What are they going to stand up and say? It's
12:54:18 6 a trade secret for which preliminary injunctive relief?
12:54:28 7 I have no idea. And they simply need to tell us and
12:54:31 8 they should have told us already.

12:54:33 9 So, when your Honor talks about time frames,
12:54:43 10 we think they should start today, give them a week, give
12:54:50 11 them two weeks to start telling us a list of
12:54:56 12 particularized trade secrets, but it shouldn't be longer
12:54:59 13 than that. They want to start taking depositions of
12:55:01 14 witnesses soon. We've been suffering under the
12:55:05 15 abnormality of the vague document request that we've
12:55:09 16 gotten and produced just everything we can find. And
12:55:12 17 it's time now to start to tailor this case to make it
12:55:16 18 proportional to a trade secret case in a normal sense.
12:55:20 19 Again, we're three months in the case, and we're three
12:55:22 20 months from a preliminary injunctive hearing, and we're
12:55:25 21 kind of in opposite land. It's moving in the opposite
12:55:29 22 way of a normal trade secret case. We're turning the
12:55:34 23 company upside down and producing all of this vast
12:55:37 24 discovery when they haven't identified a single trade
12:55:44 25 secret. And they've told us in no uncertain terms, they

MOOG, INC. VS. SKYRYSE, INC.

12:55:47 2 just won't unless your Honor tells them they have to.
12:55:51 3 We're here asking your Honor to tell them they have to.
12:55:54 4 Your Honor knows that they have to do all of the things
12:55:56 5 I said, identify the trade secrets with particularity.
12:55:59 6 They have to show they are different in the general
12:56:15 7 knowledge. They have to show they had possession of
12:56:22 8 them. They have to show, to reasonable measures, all
12:56:29 9 that requires for them to say what they are. So let's
12:56:33 10 get to step one. And it sounds like we'll be fighting
12:56:39 11 about all of those other things as well, but we should
12:56:41 12 be at step one. They should have known step one when
12:56:45 13 they sued us. They should have known step one when
12:56:50 14 their info security team did their full catalog of all
12:56:57 15 of the documents they say were taken. And they are now
12:57:00 16 alleging to your Honor and in public documents where
12:57:05 17 they were all incredibly valuable and important to them.
12:57:09 18 They should know within them are the trade secrets down
12:57:12 19 to the files, to the routines. If they are going to
12:57:16 20 take the position, well, it's all of the documents, they
12:57:18 21 should have to live in that, too, is another way to look
12:57:22 22 at it, your Honor. That means they have a burden of
12:57:27 23 proof in every single one of the million something
12:57:33 24 documents is outside of the general knowledge of the
12:57:36 25 field, was subject to reasonable measures, was actually

1 MOOG, INC. VS. SKYRYSE, INC.

12:57:40 2 a secret, has commercial value due to it being kept
12:57:44 3 secret and away from the eyes of its competitors. They
12:57:48 4 are not going to be able to meet that burden. There are
12:57:50 5 many, many cases, we've cited some of them where
12:57:54 6 district courts shut down requests for injunctive relief
12:58:00 7 or ultimately causes of action for trade secret
12:58:06 8 misappropriation when that is what the Plaintiff comes
12:58:16 9 forward with. They stole one million documents, so we
12:58:26 10 should not have to hit them over the head with an
12:58:29 11 (inaudible). That is not the way the law works. It's
12:58:32 12 time now to answer your Honor's question directly. We
12:58:35 13 think it's late for them to begin to identify this data.

12:58:38 14 Now, on the volume point, this just goes to
12:58:41 15 supplementation, from our perspective. They felt they
12:58:44 16 had enough to make very, very severe allegations in a
12:58:47 17 public filing in a complaint under Rule 11. They felt
12:58:50 18 they had enough to demand a TRO to seek a preliminary
12:58:55 19 injunction, to send over thousands of key words, to
12:58:58 20 submit declarations from their employees saying where
12:59:01 21 these documents come from, what their names are, what
12:59:04 22 their file paths are. They have enough data. They've
12:59:08 23 had it from the beginning of the case to start to tell
12:59:11 24 us what the trade secrets are. We think we are entitled
12:59:14 25 to, today, your Honor, to know everything they are going

1 MOOG, INC. VS. SKYRYSE, INC.

12:59:18 2 to allege to Judge Vilardo that they are aware of. We
12:59:25 3 think we are entitled to know everything that they
12:59:30 4 believe is a trade secret that they've identified. And
12:59:32 5 if they think they need to supplement later, they can
12:59:36 6 certainly do so.

12:59:37 7 So, that was a lot, your Honor. I know
12:59:38 8 there is going to be more responses from opposing
12:59:41 9 counsel that I'll ask for the opportunity to respond to.
12:59:44 10 But, to me, those are the fundamental principles that
12:59:46 11 lead to our request that Moog be compelled to respond to
12:59:52 12 interrogatory one. Maybe give them a week or two, if
12:59:55 13 you feel it's appropriate, but we think the time has
12:59:58 14 already passed for a proper response.

13:00:00 15 MAGISTRATE JUDGE MCCARTHY: All right.
13:00:01 16 Thank you. Ms. Andoh or whoever wants to speak on
13:00:05 17 behalf of Moog.

13:00:05 18 MS. ANDOH: Your Honor, I'm happy to. And
13:00:08 19 I'll say, I'm about 16 days out from Covid, so I may
13:00:14 20 also have a little bit of a frog.

13:00:21 21 MAGISTRATE JUDGE MCCARTHY: My apologies to
13:00:22 22 both of you. I'm kind of glad we're by Zoom today.

13:00:26 23 MS. ANDOH: Absolutely.

13:00:27 24 MAGISTRATE JUDGE MCCARTHY: No offense.

13:00:36 25 MR. LUMISH: This is a virulent strain. It

1 MOOG, INC. VS. SKYRYSE, INC.

13:00:39 2 seems to be getting everybody.

13:00:43 3 MS. ANDOH: It's pretty amazing. So, your
13:00:46 4 Honor, I'm going to start by quoting myself, actually,
13:00:48 5 from the last hearing because we discussed this very
13:00:51 6 issue on the, I guess, or, I guess it was two hearings
13:00:58 7 ago, June 1st. I said specifically to your Honor in
13:01:02 8 response to the same argument, I think as a starting
13:01:07 9 point let's get access to the images from IDS so we can
13:02:18 10 start looking at this stuff and can start getting a more
13:02:22 11 detailed level of description around the files that were
13:02:29 12 taken and the files we assert are trade secret of those
13:02:34 13 files when we get a chance to look at the actual
13:02:41 14 evidence that has been turned over. And no one is
13:02:47 15 saying that we're going to wait until October 16 to give
13:02:50 16 them an identification of trade secrets. This is to
13:02:53 17 say, your Honor, we've never said -- and I don't
13:02:56 18 understand how many times, we've said this so many times
13:03:01 19 now, your Honor. No one is saying that we're going to
13:03:04 20 go into a preliminary injunction hearing with a judge
13:03:06 21 without having an identification of trade secrets. That
13:03:09 22 has never been Moog's position.

13:03:11 23 MAGISTRATE JUDGE MCCARTHY: No, Ms. Andoh, I
13:03:13 24 know you've never said that. I think the question is,
13:03:17 25 and, you know, it would be foolery to take that

MOOG, INC. VS. SKYRYSE, INC.

13:03:20 2 position. You'd lose automatically. You know that;
13:03:23 3 everybody knows that. But the issue is, as Mr. Lumish
13:03:34 4 says, and I apologize if we're covering territory that
13:03:38 5 we've already covered, but, you know, in trying to
13:03:44 6 manage things as best I can within the limits of my
13:03:47 7 memory. But, when Moog commenced this case, you know
13:03:54 8 consistent with Rule 11, it did make reference to
13:03:59 9 various trade secrets having been taken. And putting
13:04:03 10 aside for a minute the issue of supplementation,
13:04:09 11 notwithstanding what I said previously, it does seem to
13:04:13 12 me that it ought to be able to at least begin to
13:04:17 13 describe to Skyryse and to the individual Defendants
13:04:21 14 what portions of what was taken do constitute trade
13:04:27 15 secrets and why. I mean, this isn't a larceny case
13:04:31 16 where, you know, even if you assume for sake of argument
13:04:35 17 that, and maybe it may well be true that the employees
13:04:39 18 should not have taken what they took, but, again, it's
13:04:44 19 not, it's not a claim that they stole just information.
13:04:50 20 The claim in this case, as I understand it, is that they
13:04:54 21 stole valuable trade secrets. To the extent you had in
13:05:01 22 mind or Moog had in mind from the time it commenced this
13:05:05 23 action what those are, I think it should start to
13:05:07 24 identify those in a more detailed level than just by
13:05:13 25 reference to various files or so forth or by saying go

1 MOOG, INC. VS. SKYRYSE, INC.

13:05:20 2 to the Defendants Kim and Pilkington because they knew
13:05:24 3 what they took.

13:05:27 4 MS. ANDOH: So, your Honor, if I could.

13:05:28 5 MAGISTRATE JUDGE MCCARTHY: Let me just
13:05:29 6 finish and then I'll hear from you. The fact that they
13:05:32 7 may know what they took doesn't necessarily mean that
13:05:38 8 that that is what Moog is going to claim to be a trade
13:05:41 9 secret. And that, you know, I cited from that article
13:05:44 10 in my e-mail today. That is one of the arguments that I
13:05:49 11 am currently not overly impressed with. So, back to
13:05:54 12 you.

13:05:54 13 MS. ANDOH: So, your Honor, I think, so, to
13:05:58 14 beg your Honor's forgiveness, I'm going to take a couple
13:06:01 15 steps back here. I think that one of -- as a starting
13:06:04 16 point, again. There is no dispute that we understand
13:06:07 17 that we need to identify these trade secrets before we
13:06:10 18 get to a preliminary injunction. I will say, just
13:06:13 19 quickly, and from a legal standpoint, that, you know, as
13:06:16 20 far as the case law is concerned, the case law is
13:06:19 21 consistent with what we're saying is we need to have
13:06:22 22 some access to discovery because we're in a situation
13:06:27 23 where we don't know the full scope of what they've taken
13:06:30 24 nor do we know what they've actually used at this point.
13:06:37 25 And I would point your Honor to the o two cases that we

MOOG, INC. VS. SKYRYSE, INC.

cited, in particular, to the *IntelliCAD* case and the *Medtech* case, where, in both instances, the judge said we would need to I.D. after expedited discovery and before the preliminary injunction hearing. Now, I also just want to be really clear about what the status of discovery really is and where we are relative to when we filed the complaint. Because, I think, one of the things that is getting glossed over by Skyryse is where we actually are in the discovery process notwithstanding the amount of time that has elapsed since the complaint was filed, what we knew when the complaint was filed and what we know sitting here today.

So, when we filed the complaint, obviously, we ran in to get a TRO because we found out that Misook Kim had taken about 136,000 files, and we knew that in them were files that we knew we would be claiming were trade secrets. We did not know what those files were with specificity because she had deleted the evidence of her download when she took the files. We gave a list of the names of the files and we had explained at the time that one of the issues is that because the actual files that were taken were deleted, we couldn't necessarily confirm the exact contents, but we certainly had an approximation, the best approximation we had and charged

MOOG, INC. VS. SKYRYSE, INC.

13:22:04 2 in the complaint. Mr. Pilkington's theft didn't
13:22:09 3 actually come to light until after the complaint had
13:22:11 4 already been filed. So when you read our original
13:22:16 5 complaint, you only see Misook Kim's taking as part of
13:22:20 6 this. We actually discovered Mr. Pilkington's taking of
13:22:26 7 stuff, which is the actual 1.2 million files later. We
13:22:34 8 immediately identified that information to opposing
13:22:37 9 counsel as soon as we had it. And, again, you know, we
13:22:41 10 knew the names of folders that had been taken. We did
13:22:45 11 not have an exact copy of what had been taken because,
13:22:50 12 again, the whole point of this is he had covered his
13:22:53 13 tracks on the way out the door. What did we know then
13:23:03 14 and what do we know now? So, as best as we understand
13:23:07 15 it, and I will say, your Honor, we still do not have
13:23:10 16 access to the images at IDS, and I know this sounds like
13:23:15 17 a broken record, but this has been one of the most
13:23:19 18 frustrating situations that I've ever been involved with
13:23:23 19 in terms of a trade secret case because they keep saying
13:23:28 20 that they've turned over all of this discovery, but it
13:23:33 21 doesn't matter if I can't access it. They turned over
13:26:55 22 all of this stuff to IDS. It doesn't mean that I
13:26:58 23 actually have access to it. Right? We need to be given
13:27:02 24 access through IDS. There have been a number of delays.
13:27:07 25 There have been a number of technical issues. As I sit

1 MOOG, INC. VS. SKYRYSE, INC.

13:27:13 2 here today, I believe Skyryse turned over seven or eight
13:27:17 3 images, computer images to IDS. We have unfettered
13:27:21 4 access, I believe, to only one of them at this point.
13:27:24 5 So, as far as being able and as far as the 23 devices
13:27:29 6 that the individuals turned over, we still have limited
13:27:32 7 access to most of them. So, there are 30 or 31 images
13:27:36 8 that were turned over to IDS by Defendants, and we don't
13:27:42 9 have access to the vast majority of them. And we still
13:27:46 10 don't have access to confirm whether there is a complete
13:27:52 11 copy of everything that was taken by the Defendants
13:27:54 12 there for us to go through. So, now we're talking about
13:27:58 13 approximations. And I understand that that may be what
13:28:03 14 we may have to do for the time being in order to get
13:28:09 15 through this. But, I really don't want to underestimate
13:28:15 16 the volume. I feel like every time we have this
13:28:18 17 discussion, I get told that, you know, that the burden
13:28:20 18 is massive on Skyryse's part, but somehow or another
13:28:23 19 there is no way that we're going to find 1.2 million
13:28:34 20 trade secrets. So, I think it bears explaining briefly
13:28:42 21 what it is that we understand has actually been taken.
13:28:47 22 There are on the order of about 20 something different,
13:28:50 23 I'm going to call them classifications of materials,
13:28:53 24 that were taken by the two Defendants. In calling them
13:28:56 25 classifications, and, honestly, your Honor, it might be

1 MOOG, INC. VS. SKYRYSE, INC.

13:29:01 2 easier to call them buckets. Some of those buckets are
13:29:05 3 projects, meaning files, for a specific project or a
13:29:13 4 specific employer such as the U.S. Military. Some of
13:29:52 5 them are a type of document or a classification of
13:29:57 6 documents that sort of, for lack of a better
13:30:00 7 description, your Honor, is sort of a library that you
13:30:03 8 use when you're working on specific projects. But, it
13:30:06 9 is not a "hard drive dump," which is what Mr. Lumish
13:30:13 10 just described it as. It's actually a very well
13:30:16 11 tailored and expansive library of all of the materials
13:30:21 12 that Moog uses when it's completing these projects for
13:30:25 13 these customers.

13:30:28 14 As far as I understand it, all of the stuff
13:30:31 15 that was taken falls into one of these 20 something
13:30:34 16 buckets. And we, you know, we have done everything that
13:30:38 17 we can to try and identify with as much specificity as
13:30:42 18 possible what these buckets are, what the types of
13:30:45 19 materials that existed in them are, and the information
13:30:47 20 that we had. The problem that we're coming up against
13:30:51 21 now, your Honor, because of the volume involved in this,
13:30:53 22 because we're talking, again, about 1.4 million
13:30:57 23 documents. And it's one thing to say, you know, go line
13:30:59 24 by line through code and identify which lines of code it
13:31:03 25 is. But now we're talking about other types of

1 MOOG, INC. VS. SKYRYSE, INC.

13:31:07 2 documents that we need to go through to figure out in
13:31:35 3 order for us to say what are our trade secrets. And we
13:31:40 4 really don't think it's appropriate for us to have to go
13:31:43 5 through this process multiple times. If we go through
13:31:46 6 it now, based on what we've approximated or what we
13:31:50 7 think we might be able to approximate from our own data
13:31:53 8 what was taken, it's inevitably going to have to be done
13:31:59 9 again once we get access to IDS's images, and we can go
13:32:05 10 through and actually comport what was actually taken.
13:32:10 11 And, again, you know, he said -- Mr. Lumish said
13:32:13 12 something to the effect of, I'm going to have to prove,
13:32:17 13 I have a burden of proof on the 1.4 million documents.
13:32:24 14 That's not true. The misappropriation claims are that
13:32:29 15 they misappropriated information and they used it. So,
13:32:35 16 I can identify trade secrets that are protectable that
13:32:38 17 were used and properly protected, then I succeed on my
13:32:44 18 claim. I don't have to necessarily win on all 1.4
13:32:53 19 million files. But, having said all of that and getting
13:32:56 20 back to the immediate issue, we are actually almost not
13:33:03 21 further along than when we filed the complaint in terms
13:33:06 22 of having access to the images that contained the
13:33:09 23 materials that were taken. To give an example, your
13:33:12 24 Honor, one of the hard drives that Skyryse turned over
13:33:15 25 is 568 partial images. And I call them that just

1 MOOG, INC. VS. SKYRYSE, INC.

13:33:19 2 because they are really documents. And they apparently
13:33:22 3 represent the hits that were, that were -- the documents
13:33:27 4 that hit on the search terms that we provided them that
13:33:30 5 we said would be most likely be indicative based on our
13:33:34 6 educated guess of material that was our non-public
13:33:39 7 information in their possession, custody and control. I
13:35:46 8 don't have access to that. I still can't even look at
13:35:49 9 that to figure out whether we're actually claiming that
13:35:52 10 any of those 568 documents that we're going to argue are
13:35:59 11 among the trade secrets that were used. And that is
13:36:02 12 just one of the seven or eight images that is there. I
13:36:08 13 mean, the other critical computers that we don't have
13:36:11 14 access to yet, we don't have access to Mr. Pilkington's
13:36:16 15 Skyryse-issued computer. We don't have access to Ms.
13:36:20 16 Kim's Skyryse-issued computer yet. So, you know, I
13:36:27 17 think, your Honor, in our minds, at least initially, and
13:36:31 18 certainly based on the case law that we saw, I mean,
13:36:33 19 we've always said, and I think going back to several
13:36:36 20 hearings back, your Honor, when you asked us, did we
13:36:39 21 intend to modify the relief we were seeking and did we
13:36:43 22 intend to do anything in terms of modifying the motion
13:36:46 23 for preliminary injunction, and I believe I answered at
13:36:48 24 the time that we always knew that discovery was going to
13:36:51 25 influence the way in which these things were going to be

1 MOOG, INC. VS. SKYRYSE, INC.

13:36:55 2 sought, ultimately. We know that -- not only do we know
13:36:58 3 more now than we did when the complaint was filed, the
13:37:02 4 structure of the case has changed dramatically since the
13:37:06 5 time we filed the case. We found out there was an
13:37:09 6 additional 1.2 million files taken. Four employees that
13:37:14 7 we're aware of have been terminated from Skyryse in
13:37:18 8 connection of this case. Two of whom are not named
13:37:22 9 individual Defendants, but at least one of whom appears
13:37:26 10 to have had our non-public information on his device at
13:37:31 11 least according to disclosures that we've gotten from
13:37:36 12 Skyryse. And so, you know, we're not even sure, because
13:37:40 13 we still can't get confirmation from Skyryse whether the
13:37:45 14 only theft that we're going to be identifying in the
13:37:48 15 course of our discovery are Pilkington and Kim or
13:37:53 16 whether there are additional pieces of information that
13:37:57 17 we need to deal with. Again, your Honor, I'm not
13:37:59 18 suggesting that this should be an endless process, but I
13:38:02 19 am suggesting that we should, at a minimum, be given
13:38:05 20 sufficient time, once we have access to the actual
13:38:08 21 materials that were taken, so that we can go through
13:38:11 22 them and provide this itemized list that Mr. Lumish is
13:38:16 23 asking for. To say we should go in now and try and give
13:38:20 24 him -- it seems incredibly impractical and burdensome to
13:38:26 25 force us to go through this procedure multiple times

MOOG, INC. VS. SKYRYSE, INC.

13:38:30 2 just so that they can get some kind of a response to
13:38:35 3 their interrogatory now that we're then going to have to
13:38:38 4 continue to modify four or five or six times as we
13:38:41 5 continue to get access to these files and we continue to
13:38:44 6 identify these lists. So, I think our original proposal
13:38:48 7 would have been to say, when we renew our motion for
13:38:56 8 preliminary injunction, which we're going to do at the
13:39:00 9 close of fact discovery, that, at that point in time, we
13:39:06 10 include the full identification of trade secrets so that
13:39:09 11 they have plenty of time to oppose that identity of
13:39:15 12 trade secrets in their motion and that they have plenty
13:39:29 13 of opportunity to prepare for the hearing before Judge
13:41:13 14 Vilardo, and so that the entire briefing before Judge
13:41:17 15 Vilardo is consistent with what we're actually claiming
13:41:19 16 for purposes of the preliminary injunction hearing. I
13:41:23 17 think that, again, no one is saying that we're not going
13:41:25 18 to do it. And, your Honor, we also, I almost feel
13:41:29 19 sheepish saying this, but, you know, this is not because
13:41:32 20 of a lack of effort on our part or because of lack of
13:41:35 21 organization or because, you know, we're hiding the ball
13:41:37 22 or intentionally trying to put them at a disadvantage in
13:41:40 23 the discovery process. The whole reason we asked for
13:41:43 24 expedited discovery in the first place is so that we
13:41:49 25 could perform this identification before we got to the

1 MOOG, INC. VS. SKYRYSE, INC.

13:41:54 2 preliminary injunction hearing. So, it is really only
13:42:00 3 -- for us to be able to handle this in a way approaching
13:42:05 4 efficiency given the volume and given the challenges and
13:50:00 5 issues here. I think the appropriate thing to do
13:50:06 6 continues to be to allow us to have sufficient time with
13:50:09 7 access to these images so that we can compile a
13:50:13 8 comprehensive list of what, A, what was taken, and, B,
13:50:18 9 what was taken that we claim to be trade secrets, and,
13:50:23 10 C, sufficient detail around those specific trade secrets
13:50:28 11 that we're claiming so that we satisfy Judge Vilardo's
13:50:32 12 requirements. And that is what we've said from day one
13:50:36 13 and it continues to be what we're saying now.

13:50:39 14 MR. LUMISH: May I respond briefly, your
13:50:40 15 Honor?

13:50:40 16 MAGISTRATE JUDGE MCCARTHY: Well, you may in
13:50:41 17 a minute. Well, let me hear from counsel for the
13:50:47 18 individual Defendants, if they wish to add anything.

13:50:54 19 MR. GREEN: Yes, your Honor, I would. And
13:50:56 20 I'd echo most of Mr. Lumish's points. I don't see why
13:51:03 21 it's a problem to tell us what they know now. I mean,
13:51:07 22 this is all just putting everything off farther and
13:51:10 23 farther. I mean, for instance, if we know at least now
13:51:15 24 what they are saying are the trade secrets that are
13:51:18 25 misappropriated, we can begin the process of determining

1 MOOG, INC. VS. SKYRYSE, INC.

13:51:21 2 what is relevant that Moog still hasn't produced and
13:51:25 3 that will help us with discovery disputes and this is
13:51:30 4 just going to continue pushing off this hearing. And
13:51:37 5 the idea that we should have depositions without knowing
13:51:41 6 what the trade secrets are is just beyond the pale. I
13:51:47 7 don't think it should be. I don't see the problem with
13:51:51 8 telling us what you know now and just continuing to add
13:51:54 9 to it. That is a normal practice in discovery. And
13:51:59 10 it's not unreasonable at this point. And I also, just
13:52:02 11 minor point, but we haven't, Moog has access to the
13:52:08 12 great majority of our devices. In fact, 19 of 23. So,
13:52:13 13 while there are still some disputes about a couple of
13:52:16 14 them, they do have access. I don't know with respect to
13:52:21 15 Skyryse's devices, I haven't necessarily been involved
13:52:27 16 as intimately with that. But, I think we can begin the
13:52:31 17 process now of identifying trade secrets and doing the
13:52:35 18 best we can at being efficient in discovery. And with
13:52:41 19 that, I'll -- those are my comments, your Honor.

13:52:46 20 MAGISTRATE JUDGE MCCARTHY: All right.

13:52:47 21 Thank you.

13:52:50 22 MR. LUMISH: Your Honor, I'll be brief.

13:52:52 23 MAGISTRATE JUDGE MCCARTHY: Yeah, go ahead.

13:52:54 24 MR. LUMISH: Ms. Andoh's main premise to the
13:52:57 25 Court was she needs discovery before she can tell us

MOOG, INC. VS. SKYRYSE, INC.

what the trade secrets are. And it's really what you heard and that discovery is hard and there is lots of discovery and image problems and things like that. But, that has got the whole thing backwards. Many, many courts will not even permit discovery until there is an identification of the trade secrets. And the reason for that is because what the trade secret Plaintiff can do is go root around in the incredibly sensitive and proprietary discovery that Skyryse has given here and others have given and then make it up. I'm not saying it is happening, but that is why it's organized that way. They can just make it up and say, oh, we found this really cool thing in their source code and we do that and so we'll just say that is our trade secret, or even if we don't do it. The notion of hindsight in trade secret cases is an extremely dangerous one and it's exactly why Plaintiffs have to identify their trade secrets before they get discovery.

Now, of course, in this case, it's not the way it's been organized because of the way things started. They have the discovery, they don't need the discovery to tell us what the trade secrets are. This may be the bigger point in the 1.1 million files or 1,136,000 files that they say were taken, they have

MOOG, INC. VS. SKYRYSE, INC.

13:54:29 2 those files. They identified them. They know the file
13:54:31 3 names, they have possession of them. They've had them
13:54:35 4 for months. They have had every chance to review them
13:54:38 5 and think about them and talk about them and analyze
13:54:41 6 them and scrutinize them and tell us what trade secrets
13:54:45 7 are in them. In discovery, they probably are not going
13:54:48 8 to get anything beyond those 1.2 million files because
13:54:52 9 that is what they know is taken. I'm not aware of
13:54:57 10 anything else. Maybe they will find something else and
13:55:00 11 they can supplement, maybe they won't. But the notion
13:55:15 12 they need discovery, they need us to produce back to
13:55:19 13 them the 1.1 million files from Mr. Pilkington or the
13:55:22 14 136,000 files from Ms. Kim so they can start to review
13:55:27 15 them makes no sense at all. They have them. And Ms.
13:55:30 16 Andoh said they deleted or Mr. Pilkington deleted or Ms.
13:55:34 17 Kim has deleted. Well, let's accept that at face value
13:55:38 18 for the sake of the argument without me acknowledging or
13:55:42 19 waiving our objection to it. If that were true, it
13:55:45 20 still wouldn't matter, because they have those files on
13:55:48 21 their own servers. If they are deleted means I don't
13:55:52 22 have them at all, but they have them, and they should be
13:55:55 23 the ones to look at their files and the path names that
13:55:59 24 they've identified in the directories and repositories
13:56:03 25 that they've called out and said equate to 1.2 million

1 MOOG, INC. VS. SKYRYSE, INC.

13:56:08 2 files and tell us what the trade secrets are in those.
13:56:10 3 They simply don't need discovery in that. I'm not
13:56:16 4 saying they don't need discovery and I'm not saying they
13:56:20 5 are not entitled to supplemental discovery if something
13:56:24 6 identifies itself as new. But the vast case, the
13:56:30 7 majority of what they are arguing is about files they
13:56:34 8 have identified to us as being taken by file name. So
13:56:37 9 they don't need discovery to tell us which files in
13:56:41 10 those, plain and simple. And the notion that they
13:56:44 11 shouldn't be obliged to tell us what the trade secrets
13:56:46 12 are until they spend months of discovery is completely
13:56:50 13 backwards than any other trade secret case I've been
13:56:53 14 involved in. That is point one.

13:56:55 15 And the rest I'll be quick, which is what
13:56:58 16 you didn't hear from Ms. Andoh is any denial that they
13:57:03 17 don't know what the alleged trade secrets are. She told
13:57:06 18 you that 20 buckets and they are working on categories.
13:57:14 19 Categories and buckets are not trade secrets. But there
13:57:17 20 is nothing in their response to interrogatory one at
13:57:21 21 all. So they know something now from the 1.1 and
13:57:24 22 136,000 files that they are going to say are trade
13:57:28 23 secrets. They should tell us today what those are.
13:57:31 24 There is simply no reason to wait. And back to what Mr.
13:57:35 25 Green said, we can't wait for briefing on this or two

1 MOOG, INC. VS. SKYRYSE, INC.

13:57:37 2 weeks before the hearing for this. They want to start
13:57:41 3 taking depositions soon and we need to know so we can
13:57:46 4 take depositions of their people about reasonable
13:58:24 5 measures and possession and whether these things have
13:58:27 6 value and our witnesses need to know what they are being
13:58:30 7 accused of taking so they have some response to do we
13:58:34 8 even have that, especially on the Skyrise front. They
13:58:38 9 have to show use, not just by the individual Defendants,
13:58:41 10 your Honor, they have to show use by Skyrise. There is
13:58:44 11 a mental state requirement in the DTSA and trade secret
13:58:51 12 law, generally, that if you're accusing somebody of
13:58:57 13 getting the trade secrets from an intermediary, which
13:59:00 14 would be here the allegation that Mr. Pilkington and Ms.
13:59:04 15 Kim gave it to Skyrise, you still have to show that
13:59:07 16 Skyrise had some mental culpability, that they knew or
13:59:11 17 should have known that they had information coming in
13:59:14 18 from somebody in a way that it shouldn't. They have to
13:59:17 19 tie all that stuff together and they can't do that
13:59:22 20 without telling us what the trade secrets are. And we
13:59:25 21 can't defend ourselves unless we know what the trade
13:59:29 22 secrets are.

13:59:31 23 The IDS point, all of the problems in IDS.
13:59:35 24 Let's remind the Court, it's their protocol. They
13:59:44 25 insisted on this process. And, again, it is not one

1 MOOG, INC. VS. SKYRYSE, INC.

13:59:51 2 that is a predicate to giving an answer to the files
13:59:55 3 that sit on their own systems today. They told us the
13:59:59 4 files that the trade secrets can be found in nine
14:00:02 5 devices, they produced that, Moog gave to IDS. They
14:00:07 6 have those nine devices. They have the files. They
14:00:12 7 should tell us what they are, what is trade secret
14:00:15 8 information in them and separate that from the general
14:00:17 9 knowledge. So, I think those are my major points. The
14:00:22 10 last thing I would say, we need to test all of this in
14:00:25 11 discovery. We can't wait for the hearing and be blind
14:00:31 12 sided by it. We now have an acknowledgement that they
14:00:36 13 are not going to say -- they are going to tell Judge
14:00:39 14 Vilardo something different from what they've told us,
14:00:41 15 and so we need to get that information as soon as
14:00:44 16 possible. And I've not heard an answer from Ms. Andoh
14:00:48 17 why they can't do it today on the information that they
14:00:52 18 have. What I've heard is, well, we want to do it all at
14:00:58 19 once after we do a whole bunch of discovery. There is
14:01:02 20 no need for that. As Mr. Green says, you can supplement
14:01:07 21 later.

14:01:08 22 MS. ANDOH: Your Honor, if I may.

14:01:09 23 MAGISTRATE JUDGE MCCARTHY: Ms. Andoh, just
14:01:11 24 a second, and I will hear from you again. If I can jump
14:01:15 25 in for a couple seconds. As I heard everybody say, I

1 MOOG, INC. VS. SKYRYSE, INC.

14:01:19 2 think Moog agrees that in order to make a presentation
14:01:24 3 to Judge Vilardo about what they claim is a wrongfully
14:01:29 4 appropriated trade secret, they are first going to have
14:01:33 5 to have identified that to the Defendants in the same
14:01:37 6 level of detail that they will be presenting to Judge
14:01:41 7 Vilardo. And they are also going to have to have given
14:01:43 8 the Defendants the opportunity to take -- to prepare
14:01:48 9 adequately once that level of specific disclosure has
14:01:54 10 been made, otherwise, I mean, if I were Judge Vilardo,
14:01:57 11 and it may surprise you, but, I'm not, I think he would
14:02:02 12 do one of two things. He would either deny their
14:02:06 13 request outright because they hadn't given adequate
14:02:09 14 discovery or he would put the hearing on hold until such
14:02:17 15 discovery and/or opportunity to prepare has been given.

14:02:21 16 One of the things that Ms. Andoh said that
14:02:25 17 does give me pause is the notion of efficiency in terms
14:02:38 18 of, and I guess I would be particularly concerned, if
14:02:41 19 you get into depositions based on disclosures of certain
14:02:46 20 trade secrets that have been disclosed, for example, and
14:02:52 21 then there is a supplementation, and then you have to go
14:02:56 22 back and perhaps do the same depositions over again or
14:02:59 23 take new depositions on that new information, that
14:03:02 24 doesn't strike me as -- as the most efficient way to
14:03:08 25 proceed. On the other hand, we can't wait forever. So

1 MOOG, INC. VS. SKYRYSE, INC.

14:03:13 2 what would be the problem with just saying, all right,
14:03:16 3 I'm going to put things on hold. And, by the way, I
14:03:20 4 think you all know, I mean, the Court has considerable
14:03:23 5 discretion in terms of how it sequences discovery and so
14:03:27 6 forth, but, what if I were to say, well, we're going to
14:03:32 7 put everything on hold until, until Moog has had the
14:03:38 8 opportunity to access the information that it can't
14:03:42 9 currently access, and then it can make in one fell swoop
14:03:47 10 its disclosures about trade secrets, and then the
14:03:50 11 Defendants can take discovery on that and prepare
14:03:54 12 themselves adequately. It might result in -- well, it
14:04:00 13 seems right now that things may be delayed beyond
14:04:04 14 October anyway, but it might result in a lengthier
14:04:09 15 delay, but what would be the problem with proceeding in
14:04:13 16 that way.

14:04:13 17 MS. ANDOH: Well, certainly from my
14:04:15 18 perspective --

14:04:16 19 MAGISTRATE JUDGE MCCARTHY: One at a time.

14:04:17 20 MR. LUMISH: I assumed you were talking to
14:04:18 21 me.

14:04:19 22 MAGISTRATE JUDGE MCCARTHY: Yeah. Let me
14:04:20 23 hear from you first, and then I'll hear from Ms. Andoh
14:04:25 24 and Mr. Green.

14:04:25 25 MR. LUMISH: I apologize for interrupting

1 MOOG, INC. VS. SKYRYSE, INC.

14:04:27 2 Ms. Andoh.

14:04:28 3 MAGISTRATE JUDGE MCCARTHY: That's okay.

14:04:29 4 MR. LUMISH: The problem, your Honor, is a
14:04:34 5 particular issue, which is the hindsight point that I
14:04:40 6 made before. The concern is, the main concern I would
14:04:44 7 have from that process is that it does allow them to do
14:04:48 8 exactly what -- I could send you a supplemental brief,
14:04:52 9 if you want a dozen cases on this point, that says it's
14:04:55 10 inappropriate to let a Plaintiff root around in the
14:04:58 11 discovery and the secret sauce of a competitor and then
14:05:03 12 in hindsight say, oh, there is my trade secret, because
14:05:07 13 it allows for misconduct on that front. That is why
14:05:10 14 most courts sequence it the other way. And I get this
14:05:14 15 case started differently. But most courts will start
14:05:17 16 the other way. And in California, we actually have a
14:05:20 17 statute that compels it. Because its codified this
14:05:24 18 notion that you can't, as a trade secret, Plaintiff,
14:05:27 19 come in after the fact and say, oh, I found my trade
14:05:31 20 secret and I'll just sort of attribute it to this thing
14:05:34 21 in the discovery. You have to say up front what it is
14:05:37 22 and then see if it's been misappropriated. That is my
14:05:40 23 main concern. Logistically what your Honor said makes
14:05:46 24 sense. And, efficiency, we don't want to take
14:05:50 25 depositions either of witnesses and then have to take

1 MOOG, INC. VS. SKYRYSE, INC.

14:05:57 2 them again because they changed their list of trade
14:06:01 3 secrets after the fact. So, we get that point. But we
14:06:03 4 do think there needs to be a trade secret identification
14:06:06 5 now. They should have known under Rule 11. They should
14:06:10 6 have known in light of their papers that they filed.
14:06:12 7 They should have known a substantial chunk of these
14:06:15 8 trade secrets already. We want them to have to put that
14:06:18 9 marker on the chess board, your Honor, because,
14:06:20 10 otherwise, it gives them full unfettered access to do
14:06:25 11 the hindsight thing that I think is a real problem.

14:06:27 12 MS. ANDOH: Your Honor --

14:06:27 13 MAGISTRATE JUDGE MCCARTHY: Ms. Andoh, just
14:06:29 14 a second, I'll hear from you.

14:06:30 15 Mr. Green, anything you want to add in that
14:06:32 16 regard or no or just ditto.

14:06:35 17 MR. GREEN: Well, mostly ditto. I think Mr.
14:06:41 18 Lumish is correct, that we do need -- it's only right,
14:06:48 19 they made these allegations, they are serious
14:06:51 20 allegations, it's only right that we know what they are
14:06:55 21 claiming are the trade secrets now, and we should have
14:06:58 22 the opportunity to really organize our discovery
14:07:01 23 strategy and litigation strategy right now. And we
14:07:05 24 can't do that while the ball is continuing to be hidden.

14:07:09 25 MAGISTRATE JUDGE MCCARTHY: All right. Ms.

1 MOOG, INC. VS. SKYRYSE, INC.

14:07:10 2 Andoh.

14:07:11 3 MS. ANDOH: So, your Honor, I'm a little,
14:07:14 4 I'm on two line here about how to proceed because there
14:07:19 5 were a substantial number of misrepresentations that
14:07:23 6 occurred since the last time that I spoke, and I'm not
14:07:27 7 exactly sure how much of this I really feel I need to
14:07:34 8 correct right now on the record. But, suffice it to
14:07:40 9 say, I don't believe Mr. Lumish and Mr. Green's
14:07:43 10 representations with respect to either the access we
14:07:45 11 currently have at IDS or with respect to what our burden
14:07:49 12 of proof is in the case or the disposition of the case
14:07:56 13 between when it was filed and what it is now, we
14:08:01 14 disagree. I will say this, your Honor, that I will
14:25:50 15 specifically address Mr. Green's assertion that we have
14:25:53 16 access to 19 of the 23 devices, and that is actually not
14:25:58 17 correct. IDS has informed us that, even though the
14:26:01 18 devices have been uploaded, a lot of them are missing
14:26:06 19 segments. And what that means is we can't actually open
14:26:13 20 them, and they are completely unusable as they currently
14:26:19 21 stand right now. We're trying to resolve the issue with
14:26:23 22 IDS, but there is no timeline right now for resolution.
14:26:27 23 So, your Honor, I mean, again, I mean, I guess if you
14:26:31 24 want us to put in a supplemental report from IDS, we can
14:26:39 25 do that. But the point is that the vast majority of

1 MOOG, INC. VS. SKYRYSE, INC.

14:26:45 2 images that have been uploaded, even those that have
14:26:51 3 supposedly been made accessible to us, we can't access
14:26:55 4 them and we can't read them.

14:26:59 5 I think you know, certainly with respect to
14:27:02 6 Mr. Lumish's assertion that this would allow us to root
14:27:05 7 around in order to backward engineer a trade secret,
14:27:11 8 that's not -- that's not something that I believe your
14:27:19 9 Honor should take a lot of credence in. We're very
14:27:22 10 clear about what the fact pattern is that led up to
14:27:25 11 this. We're saying our stuff was taken. We're either
14:27:30 12 going to be able to prove that it's ours or not. Right
14:27:33 13 now what we need to do is go in and go look at exactly
14:27:38 14 what it was that was taken and compare it. I know that
14:27:41 15 this is something that keeps coming up again and again,
14:27:45 16 but just because we know the file names doesn't mean
14:27:48 17 that we know what was taken.

14:27:50 18 Your Honor, in a lot of instances these
14:27:52 19 documents continue to evolve. It's not like our company
14:27:57 20 was frozen in time while Mr. Pilkington and Ms. Kim took
14:28:04 21 these files. A lot of these documents are living
14:28:07 22 documents and they continue to be updated and they
14:28:10 23 continue to be modified as time goes on. So, even
14:28:14 24 though we may know generally what a document name was,
14:28:18 25 we don't necessarily have the ability to go back in time

1 MOOG, INC. VS. SKYRYSE, INC.

14:28:22 2 and know what was taken at the time it was taken. That
14:28:25 3 is an oversimplification. And with respect to Mr.
14:28:33 4 Pilkington's files, again, we have different information
14:28:37 5 with respect to Mr. Pilkington and with Ms. Kim. Ms.
14:28:42 6 Kim, we know the file names. With Mr. Pilkington, we
14:28:45 7 know the folder names, not the file names. So, we
14:28:48 8 actually have -- we're at a slightly different situation
14:28:52 9 with Mr. Pilkington. We actually have a little bit less
14:28:56 10 information about what he took, and it's the larger
14:29:02 11 take. Ultimately, your Honor, I think that your
14:29:04 12 solution is the right one. I think that if we're able,
14:29:07 13 a lot of this fighting has been that we were supposed to
14:29:11 14 have full access to these images six weeks ago and we
14:29:14 15 still don't have access to most of them. We would have,
14:29:16 16 in all likelihood, been able to tell your Honor that we
14:29:23 17 were in a position to make an identification if we
14:30:17 18 actually had access to the images in the time frame we
14:30:21 19 were supposed to get them. And, again, I'm not here to
14:30:26 20 cast aspersions, your Honor. I'm just here, your Honor,
14:30:29 21 to try and find a path forward here that gives us the
14:30:34 22 discovery that Mr. Lumish claims he provided, because,
14:30:38 23 again, he may have produced it, but we haven't received
14:30:44 24 it because of the way the structure has been put
14:30:46 25 together with IDS.

1 MOOG, INC. VS. SKYRYSE, INC.

14:30:47 2 And I will also just say, because I feel the
14:30:50 3 need to correct the record here, that the procedure with
14:30:53 4 IDS that is in place was actually, it's Skyryse's review
14:30:59 5 protocol, which they requested and asked for, and your
14:31:02 6 Honor permitted them to do, and the privilege decision
14:31:11 7 process, meaning the process of pulling the privileged
14:31:20 8 documents out of the computer that has been causing this
14:31:24 9 delay. So, this is not something that was a product of
14:31:31 10 the original protocol that was ordered by your Honor.
14:31:33 11 This is a result of the privilege review that we're
14:31:35 12 having so many issues of being able to get these devices
14:31:39 13 available online for review. So I just sort of come
14:31:43 14 back to the same point that I keep making, which is to
14:31:46 15 say that I think it's entirely reasonable that we should
14:31:49 16 have a period of time, maybe it's four weeks or six
14:31:52 17 weeks after we have access to all of these images, where
14:31:56 18 we have an opportunity to compile a list so we give it
14:32:00 19 over once and then everybody can continue discovery with
14:32:04 20 respect to that. I will also say, your Honor, with
14:32:06 21 respect to the case law and the issue of, you know,
14:32:08 22 what's appropriate and what's not appropriate, we've
14:32:13 23 cited to a plethora of cases where just this type of
14:32:18 24 discovery was contemplated and approved by the Court.
14:32:23 25 In a number of cases that were cited by Skyryse involved

MOOG, INC. VS. SKYRYSE, INC.

14:32:29 2 a number of cases where the Court shut down discovery
14:32:32 3 after months, many more months, years, in some cases, of
14:32:38 4 discovery than we are here or where the allegations are
14:32:47 5 very, very different. And I will also point out, your
14:32:52 6 Honor, that in the cases that were cited by both
14:32:56 7 parties, the parties refer to hundreds of thousands of
14:33:05 8 trade secrets. Here we're talking about over one
14:33:10 9 million. And I know that Skyryse is sick of hearing us
14:33:16 10 talk about how many files were taken, but the volume
14:33:21 11 here is actually extraordinary. This is not a
14:33:25 12 run-of-the-mill case. This is not a normal
14:33:27 13 circumstance. This is a circumstance in which a large
14:33:29 14 volume of files was taken and there are active steps
14:33:33 15 taken to cover the steps of the files that were taken
14:33:36 16 and the files have, at least hypothetically, as far as
14:33:41 17 we know, again, one of the things we keep wondering why
14:33:45 18 I can't get confirmation from any of the Defendants as
14:33:49 19 to whether or not the actual copied materials were
14:33:53 20 produced in their entirety to IDS or not because that
14:33:58 21 leaves us in this position where we have to go through
14:34:06 22 and review all of these images because we don't know if
14:34:10 23 there is one particular image that contains the
14:34:12 24 materials that were taken or not. So, some of this
14:34:15 25 delay is also on Defendants because they have not

1 MOOG, INC. VS. SKYRYSE, INC.

14:34:17 2 identified what it is that is on the devices that have
14:34:21 3 been produced over to IDS with any specificity.

14:34:24 4 Ultimately, your Honor, I think you, know
14:34:26 5 notwithstanding the fact that I've kind of gone on a
14:34:30 6 little bit of a diatribe here, we're in 100 percent
14:34:34 7 agreement with your Honor to the extent that we are
14:34:36 8 entirely committing to giving an identification of trade
14:34:40 9 secrets if we are just given the access we've been
14:34:45 10 trying to get for four months now to these images at IDS
14:34:49 11 and we get a reasonable amount of time to review them so
14:34:55 12 that we can compile a list that is actually going to be
14:34:58 13 meaningful. And I'll also say, in response to their
14:35:02 14 suggestion that we continue to update or we continue to
14:35:11 15 supplement, if we have to continue to supplement with
14:35:15 16 given the volume that is involved here, we're talking
14:35:18 17 about potentially hundreds of thousands of individual
14:35:21 18 identifications. If we have to continue to do this over
14:35:24 19 and over again, it's going to become a full-time job for
14:35:27 20 us to just supplement. It makes infinite sense what
14:35:33 21 your Honor is proposing that if they are to have an
14:35:36 22 identification of trade secrets prior to depositions
14:35:41 23 commencing, that we do this once we turn it over to them
14:35:44 24 and then depositions commence.

14:35:46 25 MAGISTRATE JUDGE MCCARTHY: Now, let me ask,

1 MOOG, INC. VS. SKYRYSE, INC.

14:35:48 2 and maybe I need to hear from somebody at IDS, but do
14:35:52 3 you have any idea, does anybody have any idea as to when
14:35:56 4 the log jam with them is going to be broken?

14:35:59 5 MR. LUMISH: Your Honor, let me defer to one
14:36:01 6 of my colleagues, if I might. I want to raise another
14:36:04 7 issue that goes to that. Ms. Andoh said something very,
14:36:07 8 very concerning, which is they have not been preserving,
14:36:11 9 according to what I heard, the documents that they claim
14:36:14 10 was sent to us or stolen, allegedly, by the individuals.
14:36:17 11 I think what I just heard, these are living documents
14:36:20 12 that are changing, and so she needs to see what is on
14:36:23 13 IDS in order to know what is in them. Presumably,
14:36:28 14 before they sued, they would have done what any
14:36:31 15 Plaintiff has to do when they know a lawsuit is eminent,
14:36:35 16 which is put a document hold in place. They should have
14:36:38 17 these documents already. I resist the notion, if that
14:36:40 18 is not true, they have a spoliation problem. If it is
14:36:44 19 true, they shouldn't need this discovery.

14:36:47 20 Let me defer to Mr. Zahoory.

14:36:50 21 MS. ANDOH: Your Honor, I have to respond to
14:36:52 22 that, I'm sorry.

14:36:53 23 MAGISTRATE JUDGE MCCARTHY: Time. Hold it.
14:36:55 24 Let I hear from Mr. Zahoory. Ms. Andoh, you got upset
14:37:00 25 about that, so I will hear from you briefly, then I'll

1 MOOG, INC. VS. SKYRYSE, INC.

14:37:03 2 hear from Mr. Zahoory.

14:37:05 3 MS. ANDOH: Your Honor, Mr. Lumish may have
14:37:08 4 forgotten this, but we actually provided an
14:37:10 5 identification to them that the materials that were on
14:37:14 6 Mr. Pilkington's computer, which is the best
14:37:16 7 approximation we have of the materials that were in
14:37:19 8 existence at the time that he did his downloads, have
14:37:23 9 all been produced on his laptop to IDS. And I believe
14:37:27 10 we actually responded to that in discovery. So there is
14:37:30 11 no credible allegation that we somehow or another failed
14:37:40 12 to preserve the materials. And, clearly, your Honor,
14:37:43 13 this seems like the type of thing where your Honor,
14:37:48 14 unfortunately, is going to be hearing more about this
14:37:51 15 going forward, but, again, that is not an issue. The
14:37:53 16 preservation is there.

14:37:55 17 MAGISTRATE JUDGE MCCARTHY: All right.
14:37:55 18 Thank you.

14:37:56 19 Mr. Zahoory, can you speak to the IDS issue
14:38:00 20 at all.

14:38:00 21 MR. ZAHOORY: Your Honor, thank you very
14:38:02 22 much. I can speak to it at a high level. And what I
14:38:06 23 can confirm for you is that Skyryse has taken
14:38:09 24 considerable steps to complete the privilege review of
14:38:12 25 the devices that we sent to IDS, and that we confirmed

1 MOOG, INC. VS. SKYRYSE, INC.

14:38:15 2 that those privilege reviews were complete within the
14:38:18 3 deadlines that were set by the Court. IDS has had
14:38:22 4 logistical issues on their end with identifying the
14:38:26 5 files, excising the files. You know, we've worked very,
14:38:30 6 very hard with IDS to help them identify basically less
14:38:34 7 than 100 files and excise them from those devices so
14:38:40 8 they can be available to Plaintiff Moog. And,
14:38:45 9 unfortunately, IDS has hit roadblock after roadblock.
14:38:50 10 And it seems as though those roadblocks s are within
14:39:00 11 IDS's own systems. But the key thing to point out is
14:39:07 12 that Skyryse met its court-imposed deadlines. We hit
14:39:10 13 those deadlines of when those privilege reviews were
14:39:15 14 supposed to be complete. And then the log jams have
14:39:20 15 been potentially because the systems that IDS uses can't
14:39:25 16 read or can't identify the specific metadata in order to
14:39:32 17 excise them from the devices.

14:39:37 18 MAGISTRATE JUDGE MCCARTHY: All right.
14:39:38 19 Well, I guess what I need to know, if it's knowable, is
14:39:46 20 are we talking about, you know, something that may be
14:39:49 21 resolved within the next month or two or is this an
14:39:56 22 indefinite log jam.

14:39:57 23 MS. ANDOH: Your Honor, if I might. I would
14:39:59 24 ask my colleague, Ms. Yip, to provide her perspective
14:40:05 25 because she has been overseeing this process from the

1 MOOG, INC. VS. SKYRYSE, INC.

14:40:09 2 Plaintiff's side.

14:40:09 3 MAGISTRATE JUDGE MCCARTHY: Okay, Ms. Yip.

14:40:16 4 MS. YIP: Yeah, so I don't know whether
14:40:18 5 whether or not what the timeline would be for IDS to
14:40:21 6 address these issues. I know IDS has been working on an
14:40:25 7 ex parte basis with Skyryse's counsel to try and work
14:40:29 8 out these issues. I don't have a sense of the timeline.
14:40:33 9 So, if Mr. Zahoory knows the timeline for IDS to may be
14:40:39 10 able to get the excision done, I would welcome him to
14:40:43 11 jump in on that. But we don't know. I actually
14:40:46 12 followed up with IDS on that the timeline of the
14:40:50 13 excision and I haven't received a response on that.

14:40:54 14 MR. ZAHOORY: Your Honor, without putting a
14:40:57 15 firm date down, saying a month should be enough time.
14:41:01 16 It should be considerably less than a month. We've hit
14:41:09 17 our deadlines. We've been working really hard with IDS.
14:41:17 18 Our feeling is that it's at the last stages of this that
14:41:21 19 IDS should be able to excise this, and, if not, it
14:41:24 20 should already be done as of today. So a month is
14:41:27 21 significantly longer. It would be significantly less
14:41:30 22 than that.

14:41:32 23 MAGISTRATE JUDGE MCCARTHY: Okay.

14:41:34 24 MS. ANDOH: Well, your Honor, I will say
14:41:35 25 this, though, there is also an excision problem with the

1 MOOG, INC. VS. SKYRYSE, INC.

14:41:38 2 individual Defendants, and so, you know, I just want to
14:41:41 3 make sure that we're all on the same page about the fact
14:41:44 4 that even if Skyryse's devices are resolved, that there
14:41:49 5 is a volume issue, your Honor, I think is what I'm
14:41:51 6 trying to say. But I do think it's a matter of a month
14:41:55 7 or weeks as opposed to sort of an indefinite set of
14:42:00 8 issues. I think that the vast majority of these
14:42:03 9 devices, it's just a back log.

14:42:07 10 MAGISTRATE JUDGE MCCARTHY: And, so, let me
14:42:09 11 see if I understand you correctly, I hope I do. That
14:42:12 12 once all of those log jam issues are resolved, then you
14:42:20 13 would be in a position to start making -- to make your,
14:42:25 14 within some period of time, make your global
14:42:31 15 identification of what trade secrets you claim are at
14:42:35 16 issue in this case, is that right?

14:42:37 17 MS. ANDOH: That's right, your Honor.
14:42:38 18 Certainly at least for purposes of the preliminary
14:42:41 19 injunction. I just want to be really clear, we're in an
14:42:44 20 expedited discovery for purposes of the preliminary
14:42:55 21 injunction. The answer is, we would make a universal
14:43:01 22 identification that would be the scope of what we would
14:43:04 23 be seeking to prove for purposes of the preliminary
14:43:08 24 injunction. I just want to be careful about that, your
14:43:10 25 Honor, because, obviously, we have other claims in the

1 MOOG, INC. VS. SKYRYSE, INC.

14:43:12 2 case that we're not conducting any discovery on right
14:43:18 3 now because they are not part of the basis for the
14:43:22 4 preliminary injunction. For example, unfair
14:43:28 5 competition. Obviously, once the preliminary injunction
14:43:30 6 process is over, there is going to be more expansive
14:43:33 7 discovery. We would obviously reserve the right to be
14:43:35 8 able to expand our list of trade secrets if we go
14:43:46 9 through a second round of discovery and identify
14:43:51 10 additional ones. But we would be comfortable with being
14:43:57 11 bound for purposes of the PI hearing with whatever input
14:44:03 12 we provided following reasonable examination once we
14:44:10 13 identify what IDS has.

14:44:16 14 MR. LUMISH: I'll just repeat my objection
14:44:18 15 to all of that, your Honor. It's just a recipe for them
14:44:21 16 to use hindsight in the way that the cases just don't
14:44:25 17 permit. Your Honor has heard me on that, I won't keep
14:44:27 18 repeating that.

14:44:28 19 MAGISTRATE JUDGE MCCARTHY: Yes, I've heard
14:44:29 20 you, and I know it's in your papers somewhere. And this
14:44:33 21 may be shocking to you, but you've all submitted a
14:44:38 22 rather large volume of papers, so I'm doing my best to,
14:44:42 23 and I don't fault you for that, I recognize it's
14:44:44 24 necessary, but if you could both, and, Mr. Lumish, if
14:44:51 25 you could pinpoint me to the portions of your submission

1 MOOG, INC. VS. SKYRYSE, INC.

14:44:54 2 and/or the cases that you claim favor your position that
14:45:01 3 the identification should not be delayed, and, Ms.
14:45:04 4 Andoh, you've mentioned a couple of cases that you say
14:45:08 5 favor the position that it should be, I want to think
14:45:13 6 about this, and while this whole topic is, is still
14:45:21 7 relatively fresh in my mind. I do want to write on
14:45:25 8 this, just for the parties' benefit and perhaps for
14:45:30 9 Judge Vilardo's benefit, if somebody wants to take it up
14:45:36 10 to him, bearing in mind that any discovery-related
14:45:39 11 decision is usually reviewed on a, you know, clearly
14:45:44 12 erroneous standard. But I just, and I'm not, as I said
14:45:49 13 in my e-mail today, I'm not issuing any definitive
14:45:55 14 ruling right now. I can see both of your positions. I
14:46:00 15 want to take a few days and get something out in writing
14:46:03 16 and then we'll reconvene. I'll put the other aspects of
14:46:07 17 the other motions and so forth on hold. Because I think
14:46:11 18 we're going to go one way or the other on this. And
14:46:14 19 what I want to do is proceed in the way that makes --
14:46:19 20 that is most efficient for everybody and makes the most
14:46:23 21 amount of sense. You may agree or may disagree with
14:46:27 22 whatever approach I take, but I can assure you, I'm just
14:46:31 23 trying to come up with something that makes the most
14:46:35 24 sense for everybody. So, I will, if you can just both
14:46:40 25 get me those citations, you can just shoot me an e-mail

1 MOOG, INC. VS. SKYRYSE, INC.

14:46:45 2 or whatever. I want to think about this a little bit.

14:46:48 3 I'm going to get something out to all of you in the next

14:46:51 4 couple of days on this issue and then we can reconvene.

14:46:55 5 Okay?

14:46:56 6 MR. LUMISH: Your Honor, may I ask, on the

14:46:58 7 question you also had about the IDS backlog, we've had a

14:47:07 8 chat going here, and one of my associates has suggested

14:47:11 9 that we may be finished. I don't want to represent that

14:47:14 10 to your Honor or Ms. Andoh until I confirmed it. Would

14:47:17 11 it also be acceptable if we sent an e-mail to your Honor

14:47:21 12 giving an update on where we stand on that giving you an

14:47:26 13 idea?

14:47:27 14 MAGISTRATE JUDGE MCCARTHY: On the IDS

14:47:28 15 backlog?

14:47:30 16 MR. LUMISH: Yes. You asked where we are

14:47:35 17 and I want to make sure we're careful in telling you

14:47:38 18 where we are in that process. And so if you are open to

14:47:44 19 it, we can send you an e-mail also giving you a quick

14:47:49 20 report on that.

14:47:50 21 MS. ANDOH: And, your Honor, I ask that we

14:47:52 22 be allowed to do the same. Obviously, we may have

14:47:56 23 slight differences in opinion given where we are in the

14:48:00 24 process. Although, I will say this, your Honor, with

14:48:05 25 respect to the question of Skyryse and IDS's working

1 MOOG, INC. VS. SKYRYSE, INC.

14:48:07 2 with each other, some of that work is being done ex
14:48:12 3 parte, so, obviously, we're going to rely on their
14:48:18 4 representations with respect to that.

14:48:20 5 MAGISTRATE JUDGE MCCARTHY: Okay. And let
14:48:21 6 me just ask a couple of general questions because I'm
14:48:26 7 going to draw today's session to a close. I know there
14:48:29 8 are a couple of other issues out there, but I think this
14:48:33 9 particular issue is one that I just want to get, get you
14:48:39 10 my final view on how we're going to do this. And then
14:48:43 11 you can take it up if you want. But, notwithstanding
14:48:49 12 the number of disagreements that you have on a lot of
14:48:53 13 issues, that you all strike me as very capable attorneys
14:49:00 14 and very diligent and honest attorneys. I'm not just
14:49:04 15 blowing smoke here. But I just want to, as I've done in
14:49:07 16 the past, I want to encourage you all to try to work out
14:49:12 17 among yourselves as many issues as you can because, and
14:49:16 18 I don't say this in a whining sense, you may think I am,
14:49:20 19 but I'm really not. I'm trying to deal with as many
14:49:26 20 issues as I can, but you throw a lot at me and there are
14:49:31 21 limits to what, you know, what I can decide. For
14:49:34 22 example, on this one, I think it's important that I put
14:49:36 23 something down in writing. But I can't do that on
14:49:40 24 everything. And so some of it, I'm just going to, you
14:49:45 25 know, do the best I can on. But, what I just encourage

1 MOOG, INC. VS. SKYRYSE, INC.

14:49:49 2 you all to do is to continue your discussions and try to
14:49:54 3 work through as many issues on your own as you can
14:50:00 4 before you come to the Court. And I know, you know,
14:50:04 5 you're aware of the requirements under the discovery
14:50:08 6 rules that you do that anyway, and I think you have been
14:50:11 7 doing that. But there has been some suggestions that
14:50:14 8 one side or the other isn't fully meeting that
14:50:17 9 obligation, and I'm not deciding whether or not that is
14:50:20 10 true. But I'll just say there are limits to what I can
14:50:24 11 address in this case because I have other cases, just as
14:50:27 12 you do. So, I think I've said enough for today. As I
14:50:33 13 indicated, I will get a decision. I would like those
14:50:36 14 e-mails -- well, today is Friday afternoon, if you can
14:50:40 15 get me something either over the weekend or by Monday
14:50:44 16 that I can just try to get some type of preliminary
14:50:48 17 decision out to you sometime next week and then we can
14:50:53 18 decide when to reconvene. Okay?

14:50:55 19 MS. ANDOH: Your Honor, does it make sense
14:50:56 20 for us to schedule a follow update now since we got
14:51:00 21 everybody on the line just because?

14:51:02 22 MAGISTRATE JUDGE MCCARTHY: Yeah, that
14:51:03 23 probably makes some sense. Let me -- we just went to a
14:51:09 24 new calendaring system, which I'm not fully -- okay.
14:51:18 25 Assuming I get something out to you next week, let me

1 MOOG, INC. VS. SKYRYSE, INC.

14:51:26 2 just -- one of the problems is our scheduling system
14:51:29 3 locks me out all of the time if I don't use it. I have
14:51:33 4 to put my password back in. Okay.

14:51:42 5 How about I'll get something out to you next
14:51:45 6 week. And then we can -- how about if we reconvene, how
14:52:06 7 about Tuesday the 24th, maybe, at like maybe 4 o'clock.

14:52:14 8 MR. LUMISH: I have the 24th is a Sunday,
14:52:18 9 your Honor.

14:52:18 10 MAGISTRATE JUDGE MCCARTHY: It is? I'm
14:52:21 11 sorry. Yeah, my bad.

14:52:23 12 Tuesday the 26th. I have availability at 4
14:52:30 13 o'clock or our time or I could do.

14:52:43 14 MR. LUMISH: That works for me, your Honor.

14:52:44 15 MS. ANDOH: That certainly works for
14:52:50 16 Shepphard Mullin. Mr. Fluskey or Ms. Muto, are one of
14:52:52 17 you at least available?

14:52:55 18 MR. FLUSKEY: Yes.

14:52:55 19 MAGISTRATE JUDGE MCCARTHY: That works for
14:52:57 20 Plaintiffs.

14:52:57 21 MR. GREEN: If we do 4 o'clock, then, well,
14:53:02 22 I'll need my associate Alex to stand in for me. I will
14:53:06 23 not be able to do 4 o'clock.

14:53:08 24 MAGISTRATE JUDGE MCCARTHY: Well, how about
14:53:10 25 Wednesday, July 27th, I have, I have one thing on in the

1 MOOG, INC. VS. SKYRYSE, INC.

14:53:16 2 morning, but I have the entire -- I currently have the
14:53:19 3 entire afternoon open, if that works better for people.

14:53:25 4 MR. LUMISH: No better, your Honor, but I
14:53:27 5 can make that work.

14:53:29 6 MR. GREEN: If we could just, my problem is
14:53:32 7 only with the time of 4 o'clock. If we could do it 3
14:53:36 8 eastern or earlier, I understand there are people on the
14:53:41 9 west coast, I don't want to be difficult about this.

14:53:44 10 And Mr. Truitt certainly is very capable of --

14:53:51 11 MAGISTRATE JUDGE MCCARTHY: Well, are we
14:53:52 12 still talking about the 26th? See, I have an oral
14:53:56 13 argument at 2 o'clock.

14:53:58 14 MS. ANDOH: Your Honor, the 27th, I think we
14:54:01 15 can do the 27th. I would actually ask that it be
14:54:05 16 earlier in the afternoon. Is it possible to do 1, 1:30,
14:54:09 17 something like that?

14:54:10 18 MAGISTRATE JUDGE MCCARTHY: Sure. Yeah.
14:54:11 19 Currently the only thing I have is at -- I have a status
14:54:17 20 conference at 10 a.m. So I could do 1, if you want.

14:54:24 21 MR. FLUSKEY: 1:30?

14:54:25 22 MAGISTRATE JUDGE MCCARTHY: I'm sorry?

14:54:26 23 MR. FLUSKEY: 1:30 would be preferable for
14:54:29 24 Hodgson Russ, if possible.

14:54:30 25 MS. ANDOH: That is Mr. Fluskey.

1 MOOG, INC. VS. SKYRYSE, INC.

14:54:34 2 MR. GREEN: I want to confirm we're talking
14:54:37 3 eastern time, 1:30.

14:54:41 4 MAGISTRATE JUDGE MCCARTHY: Yes.

14:54:42 5 Does that work for everybody?

14:54:44 6 MR. FLUSKEY: That would, your Honor, thank
14:54:45 7 you.

14:54:45 8 MAGISTRATE JUDGE MCCARTHY: Let me ask this.
14:54:47 9 Is there anybody else on this Hollywood squares who has
14:54:53 10 Covid?

14:54:57 11 UNIDENTIFIED PERSON: I had it in May.

14:55:01 12 UNIDENTIFIED PERSON: I am four days out, I
14:55:02 13 win the competition, your Honor.

14:55:03 14 MAGISTRATE JUDGE MCCARTHY: I wish you a
14:55:04 15 speedy recovery. And I'm glad we're talking through a
14:55:08 16 screen rather than in person. And I do look forward to
14:55:11 17 meeting the rest of you in person one of these days.
14:55:15 18 Everybody enjoy your weekend and I'll just do a text
14:55:19 19 order scheduling the next conference. It will be by
14:55:22 20 Zoom. And we will, as I said, I'll get something out to
14:55:28 21 you next week. Okay?

14:55:30 22 MR. LUMISH: Thank you, your Honor.

14:55:30 23 MS. ANDOH: Thank you, your Honor.

14:55:33 24 MR. GREEN: Thank you, your Honor.

14:55:35 25 MAGISTRATE JUDGE MCCARTHY: Take care.

1 MOOG, INC. VS. SKYRYSE, INC.

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4 CERTIFICATE OF REPORTER

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6 I certify that the foregoing is a correct transcript
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